

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	CG Docket No. 03-123
)	
Petition for Declaratory Ruling Filed by the)	
California Coalition of Agencies Serving the)	
Deaf and Hard of Hearing (CCASDHH))	
Concerning Video Relay Service (VRS))	
Interoperability)	

To: Secretary, FCC
For: Chief, Disabilities Rights Office,
Consumer & Governmental Affairs Bureau

COMMENTS OF HAMILTON RELAY, INC.

Hamilton Relay, Inc. ("Hamilton") hereby submits its comments in response to the Commission's March 1, 2005 *Public Notice* regarding interoperability among Video Relay Services ("VRS").¹ The *Public Notice* was issued in response to a petition from the California Coalition of Agencies Serving the Deaf and Hard of Hearing (the "Coalition"). In the petition, the Coalition requests that the Commission prohibit any VRS provider that receives compensation from the Interstate Telecommunications Relay Service ("TRS") Fund from purposely restricting its deaf and hard-of-hearing customers to a single VRS provider via the

¹ *Petition for Declaratory Ruling Filed by the California Coalition of Agencies Serving the Deaf and Hard of Hearing (CCASDHH) Concerning Video Relay Service (VRS) Interoperability, Public Notice, CC Docket No. 98-67, CG Docket No. 03-123, DA 05-509 (rel. Mar. 1, 2005).*

software or hardware of the customers' VRS equipment or through exclusivity agreements with those customers. The Coalition's concerns stem from one VRS provider's marketing campaign which offers free VRS equipment but restricts the user from contacting VRS users outside the provider's network. As a nationwide provider of VRS, Hamilton welcomes the opportunity to offer its support for the Coalition's petition, as indicated below.

I. Restrictive Marketing Practices Are the Root of the Problem.

While Hamilton supports the intent of the Coalitions petition, Hamilton believes that the problem is better classified as a restrictive marketing practice vs. that of technical interoperability. Hamilton believes that the equipment distributed by the provider in question is fully capable of interoperating with other VRS users. The problem is that, as a marketing practice, the provider blocks the Internet Protocol ("IP") addresses of other VRS providers, thus prohibiting its VRS consumers from communicating with other providers or their customers.

The blocking of an IP address in a packet-switched network is the equivalent of blocking a telephone number in a circuit-switched network. The Commission would not tolerate the purposeful blocking of telephone numbers without a customer's consent, and nor should it tolerate the purposeful blocking of IP addresses. Such a marketing practice is inconsistent with the goal of nondiscriminatory accessibility by the broadest number of users to public

networks.² Hamilton therefore urges the Commission simply to prohibit any VRS provider from blocking the IP addresses of other VRS providers and their customers.³ A prohibition of this type of marketing practice will accomplish the Coalition's request and will serve the public interest without frustrating providers' attempts to offer innovative new VRS services, as discussed below in Section III. Finally, if the Commission were to prohibit the blocking of IP addresses, exclusivity contracts would be unnecessary, thus addressing the other concern raised by the Coalition about this marketing practice.

II. Closed Networks Do Not Comply with the Statutory Mandate of Functional Equivalence.

In addition, Hamilton agrees with the Coalition that a closed VRS network is inconsistent with the statutory mandate that relay services be "functionally equivalent" to voice communications.⁴ Because certain IP addresses are being blocked by this provider, hearing users are unable to contact the provider's VRS customers using another VRS service. In addition, the free equipment provided to VRS users prohibits them from calling the VRS customers of other VRS providers. There is no comparable scenario in the voice-to-voice communications world.

² 47 U.S.C. § 256(a)(1). In addition, customer premises equipment must be "usable" by individuals with disabilities. *Id.* § 256. Equipment that unnecessarily restricts a disabled person's access to certain callers does not, Hamilton submits, satisfy the usability requirement, particularly when such access is readily achievable.

³ As the ultimate administrator of the interstate relay fund under the Communications Act, the Commission clearly has jurisdiction to institute such a requirement.

⁴ 47 U.S.C. § 225(a)(3).

Accordingly, this restrictive practice is not functionally equivalent to communications among hearing individuals, and thus is statutorily prohibited.

Users of VRS, like users of traditional telecommunications, place great value on being able to communicate with more, rather than fewer, people.⁵ Artificial limitations on a VRS user's ability to communicate with others generally should be discouraged as harmful to consumer choice and administratively burdensome to regulate. For these reasons, Hamilton supports the Coalition's efforts and suggests that a ban on IP address blocks will accomplish this goal.

III. Strict Interoperability Requirements May Not Be Beneficial to Consumers.

At the same time, Hamilton encourages the Commission and consumers to give thoughtful consideration to the long-term implications of a stringent interoperability requirement when a more simple solution is available. An inflexible prohibition of non-interoperable VRS hardware and software potentially could stifle the innovation of new and better VRS services. By way of example, digital compact disks are not interoperable or backwards compatible with vinyl record turntables, yet few would argue that the latter is superior to the former. If consumer electronics manufacturers had been barred from introducing non-

⁵ Cf. *Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations by Time Warner Inc. and America Online, Inc., Transferors, to AOL Time Warner Inc., Transferee*, Memorandum Opinion and Order, CS Docket No. 00-30, FCC 01-12, 16 FCC Rcd 6547, ¶ 194 (rel. Jan. 22, 2001) ("*AOL Decision*") (noting that the same rationale applies to instant messaging users). VRS has all of the characteristics of a "network effects" service, in that the service becomes more attractive to consumers as more consumers use the service.

interoperable (or non-backward compatible) equipment, consumers today may well have been stuck with outmoded technology. Similarly, many new IP telephony providers are offering innovative services to customers that are in various ways non-interoperable. Some IP telephony providers, for instance, offer unlimited calling to other member subscribers but charge regular rates for calls to non-members.⁶ These types of arrangements are to be expected, and tolerated, in nascent services in order to encourage new entrants and competition. VRS is an equally nascent service for which providers need a certain level of flexibility in order to offer consumers more choices and better services.

In the end, a distinction must be made between, on the one hand, a marketing effort which blocks users from making legitimate calls for anticompetitive reasons, and on the other an innovative new service offering that may be backward-incompatible with older software but is not purposely designed to be anticompetitive. If an interoperability requirement is mandated, it potentially could entrench current VRS equipment and dissuade innovation and experimentation with new and better equipment. In the long-term, this policy could be a disservice to future VRS consumers.

⁶ Moreover, innovative “push to talk” cellular services are compatible between customers of the same cellular provider, but are not interoperable with other providers’ users. Importantly, however, all cellular equipment is capable of communicating with the public network and cellular providers may not block numbers without the customer’s consent.

Accordingly, Hamilton supports a ban on IP address blocks, but urges caution with respect to a potentially burdensome interoperability requirement.

Respectfully submitted,

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